KLEIN, ZELMAN, ROTHERMEL & DICHTER, L.L.P.
485 MADISON AVENUE
NEW YORK, NEW YORK 10022
TEL (212) 935-6020
FAX (212) 753-8101

FRED C. KLEIN
ANDREW E. ZELMAN
JOAN EBERT ROTHERMEL
JOEL R. DICHTER
JANE B. JACOBS
NANCY B. SCHESS

JEFFREY M. SCHLOSSBERG
DAVID O. KLEIN

STEPHEN B. HANSBURG
OF COUNSEL

August 26, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Hon. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: CC Dockets Nos. 96-146 and 93-22
<u>Comments on Proposed Rulemaking</u>

Dear Secretary Caton:

Enclosed please find ten copies of the comments of the TeleServices Industry Association in response to the <u>Notice of Proposed Rulemaking</u>, released on July 11, 1996, in the above-referenced proceedings.

Sincerely,

Joel R. Dichter

JRD:trd
Enclosure
cc: Ms. Mary Romano (with diskette)

No. of Copies rec'd 0+9

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules	)	
Governing Interstate Pay-Per-Call	)	CC Docket No. 96-146
and Other Information Services Pursuant to	)	
the Telecommunications Act of 1996	)	
	)	
In the Matter of	)	
	)	
Policies and Rules Implementing	)	CC Docket No. 93-22
the Telephone Disclosure and Dispute	)	
Resolution Act	)	

COMMENTS OF THE TELESERVICES INDUSTRY ASSOCIATION

The TeleServices Industry Association ("TSIA") respectfully submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Order and Notice of Proposed Rulemaking ("NPRM"), released July 11, 1996, in the above-captioned proceedings. TSIA expresses its appreciation to the Commission for the opportunity to submit these comments. The NPRM raises several key issues that, if adopted, could have serious ramifications for the development of the information services industry. By submitting these comments, the TSIA wishes to assist the Commission in adopting rules and regulations that insure an environment whereby the dual interests are realized of affording consumers adequate protections and, at the same time, fostering the growth and benefits to consumers and industry from the burgeoning information age.

TSIA is a national trade association representing a wide range of U.S. and international companies engaged in the information and electronic publishing industry. The membership of TSIA includes service bureaus, carriers, information providers, clearinghouses, publishing and marketing companies. In other words, TSIA is comprised of over 400 companies operating in all sectors required to create, distribute and administer the provision of information services to the public. TSIA has been an active participant in all legislative and regulatory proceedings concerning pay-per-call information services proceedings since its organization. TSIA representatives have met on numerous occasions with this Commission, the Federal Trade Commission, Department of Commerce, and Congressional members in an proactive effort to address the state of information services.

It must be kept in mind that the underlying purpose of this proceeding is to amend the Commission's rules and regulations to implement the legislative intent of Congress in enacting the Telephone Disclosure and Dispute Resolution Act (TDDRA) and recent amendments thereto. In the TDDRA, Congress recognized that:

> "The use of pay-per-call services, most commonly through the use of 900 telephone numbers, has grown exponentially in the past few years into a national, billion-dollar industry as a result of recent technological innovations. Such services are convenient to consumers, cost-effective to vendors, and profitable to communications common carriers . . . many pay-per-call businesses provide valuable information, increased consumer choices, and stimulate innovative and responsive services that benefit the public." (Section 1(b)).

Therefore, in fashioning regulations, we ask the Commission to consider solutions to "the large body of complaints involving pay-per-call and other information services" that maintain the availability of "valuable information [services] . . . that benefit the public." (Order and Notice of Proposed Rulemaking ("NPRM", ¶13). In that regard, TSIA could not agree more with the Commission that safeguards should be in place "to ensure that consumers are able to make informed decisions about whether to purchase or permit access to information services from their telephone lines." (NPRM, ¶13). In furtherance of these objectives, TSIA offers the following comments on various issues raised within the NPRM.

1.

The 1996 law now requires "the calling party [to have] a written agreement, including an agreement transmitted through an electronic medium" or alternatively "the calling party is charged for the information . . . by means of a credit, prepaid, debit, charge, or calling card"

The TSIA recommends that three additional forms of payment should be added by the FCC as acceptable alternatives to the written presubscription agreement. The FCC presents in the NPRM the new elements required to establish a valid presubscription arrangement between the caller and the information provider. The FCC proposes these additional rule changes in the NPRM with the intent to "diminish possibilities for evasion and abuse, protect consumers, and advance development of information services." For reference, see section 14 et seq. of the NPRM, where the FCC sets forth specific requirements to be followed when charges are made pursuant to a written presubscription agreement.

Section 701 of the 1996 Telecommunications Act (the "1996 Act") modifies 47 U.S.C. §228(c)(9) to establish five (5) forms of payment: prepaid account, debit, credit, charge or calling card as acceptable competitive billing options available to callers entering into a written presubscription agreements for information services using toll-free telephone exchanges. It is the recommendation of the TSIA membership to the FCC that the acceptable payment alternatives in section 29 of the NPRM be expanded to also include "direct remittance" "pre-authorized draft" and "direct billing" forms of payment. These three (3) forms of payment by callers should be inserted in addition to the five (5) other acceptable forms of payment already defined in section 29 of the NPRM. These additional payment methods would be subject to the same rules and requirements that the presently identified forms of payment are already subject to.

Direct remittance as a form of payment is already identified within the 1996 Act, and thereafter verbatim in the NPRM, as an acceptable form of payment that a consumer can choose under a written presubscription agreement. See 47 U.S.C. §228(c)(8)(A)(vi) and also sections 17 and 18 of the NPRM. The written presubscription agreement is required to include "the subscriber's choice of payment method, which may be by direct remit, debit, prepaid account, phone bill, or credit or calling card." If this form of payment was required to follow the same disclosure requirements that the other currently acceptable forms of payment methods are subject to, then the calling consumer would be afforded the same protections that are the intended to be extended in the 1996 Act.

Pre-authorized draft would include within its definition a system of payment that allows a customer to pay for a call by the generation of a bank draft via a telephone call that debits the caller's checking account. Pre-authorized draft is also known in the banking industry as "check debiting" or "tele-checks". Pre-authorized draft is specifically authorized under the Uniform Commercial Code. For reference, see UCC sections 1-201(39), 3-103(a)(6), 3-104(a), 3-401(a), (b), 3-402(a). In connection with pay-per-call services, first time callers to a pay-per-call service would be required to be routed through the information provider's operators to obtain the caller's personal data and bank account information. Payment to the information provider will come directly from the caller's checking account just as can be the case with the debit card form of payment already mandated by the 1996 Act.

Direct billing is another program that would be available to callers for payment of pay-per-call services. Instead of having credit cards used for the transaction, the callers are charged for their services through direct billing by the information provider. First time callers are also routed through the information provider's operators for personal data information. The caller's address verification is obtained by the information provider. First time callers are sent a terms of service agreement and are assigned a PIN number for future calls to the pay-per-call service.

The majority of the abuse problems in the pay-per-call field that have been reported to the FCC since the enactment and implementation of the TDDRA have generally been based upon a subscriber of a telephone number receiving a charge for a call made on an 800 toll-free number. (See NPRM, ¶42). For reference, see the analysis contained in the Common Carrier Scoreboard, Fall, 1995, a report produced by the Enforcement and Industry Analysis Divisions of the FCC Common Carrier Bureau. Conversely, callers using credit cards for the payment of information or entertainment services available over toll-free numbers did not generate nearly the same number of complaints to the FCC, or any other government agency, since the 1992

TDDRA rules have been implemented. In the usual credit card payment situation, the party being billed on the account of the company providing the service is the holder of the credit card not the telephone subscriber.

While the fraudulent use of credit cards and 900 services by consumers may continue to be an industry-wide problem, it is no greater in degree to the security problems experienced by the use of credit cards and other forms of payment in any other field of commerce. In response, our members have literally expended millions of dollars in equipment and customer service improvements to curb fraudulent use of information services. These expenditures include development of extensive data bases to block access from consumers that repeatedly utilize services without an intention to pay therefor or have access to a telephone for which they are not the subscriber. Moreover, the quantity of customer service representatives has been greatly expanded to promptly respond to consumer inquiries. Thus, the industry is continuing to explore billing options that will prevent fraud from being perpetrated by callers upon both the subscriber and the provider of the information service.

The inclusion of the "direct remittance", "pre-authorized draft" and "direct billing" forms of payment within the acceptable competitive alternatives to written presubscription in 47 U.S.C. §228(c)(9) would subject these options to the same expanded preamble disclosures defined in the 1996 Act and identified in section 29 of the NPRM that cover the currently acceptable alternatives.

All three of the additional payment methods proposed in these comments allow for a caller to set up payment methods with the information provider using a toll-free service number that does not involve the subscriber of the calling telephone number in the billing process. Instead, billing arrangements are made directly between the calling party and the company providing the service. The retail charges incurred by the calling party using a toll-free number to obtain a service under either method of payment are separate from the underlying subscriber's telephone charges just as is the case with the other currently acceptable forms of alternative payment. In short, "direct remittance", "pre-authorized draft" and "private billing" are types of payment mechanisms that provide consumers and telephone subscribers with protections and safeguards available for payment mechanisms even beyond those already approved by the FCC for alternative presubscription services.

2.

In the NPRM, it is stated that, "In apparent efforts to avoid consumer safeguards applicable to 900 number services, IPs have offered their services through collect calls, purported presubscription arrangements, and tariffed-service systems that have been available on 500, 700, 800, international and domestic POTS ("plain old telephone service") numbers. IPs evidently move their services from one arrangement and dialing sequence to another in response to new protective regulations, rulings, or enforcement actions, sometimes with the apparent encouragement of carriers who pay commissions to IPs in exchange for the increased traffic generated by information-service calls." (¶39).

In contrast to IPs that seek to avoid consumer safeguards, the members of TSIA and the information services industry in general, work hard to ensure that consumer safeguards are in place and adhered to. The industry recognizes that to the extent it can control its own affairs, and respond swiftly and effectively to consumer complaints, the less rigorous regulatory scrutiny it will face. In addition, we believe demand for services will grow from self-regulation. To achieve this goal, TSIA has adopted a "Code of Ethics and Standards for Pay-Per-Call" establishing protections that exceed the regulations imposed by the Commission and Federal

Trade Commission ("FTC"). Indeed, the Code is not limited to 900 services but is applied by TSIA to all information services regardless of the dialing pattern.

Accordingly, the TSIA supported the recent amendments to the TDDRA. Specifically, abuses that arose from the assessment of exorbitant charges for tariffed information services accessed through 1-500 and other gateways adversely affected all of our membership. It is our desire to see the development of a stabile, growing information services industry that will meet the needs of our customers for decades to come. We realize that excessive charges and poor customer service invariably lead to a plethora of consumer complaints that retard the image and demand for all information services. In the wake of such practices, legislation, regulations, carrier and billing limitations are sure to follow. Therefore, we worked with Congress to "close a loophole" that enabled information services to charge consumers "high prices" for services accessible through "1-500" and similar gateways. (1996 Act, Joint Explanatory Statement of the Committee of Conference, section 701).

We believe that the Commission's concern of protecting and maintaining the consumer safeguards of the TDDRA may be met without limiting provision of information services exclusively to 900 numbers. The impact of assigning all pay-per-call to 900 may prevent the development of new forms of technology. For example, the rapid development of the Internet and convergence of telecommunications, cable and wireless services will yield new avenues for providing timely access to valuable information services that a blanket rule will retard. The Legislative Committee of the TSIA is working with the Commission on an on-going basis to address these matters.

Moreover, such a limitation would run contrary to the judgment of Congress. Through the exemption for presubscription arrangements, including credit cards, calling cards, debit cards and the like, Congress recognized that 900 was not the "be all and end all" for the provision of information services. There remains good and sound business reasons, completely unrelated to the misperception of the Commission of a desire to avoid consumer safeguards, for using competitive dialing patterns.

A principle reason for using competitive dialing patterns is the high cost and limited competition with regard to 900 service offerings. The Commission's recent efforts to promote competition in all telecommunications, and related enhanced, services would be hindered by unduly restricting access to information services. The limited availability of 900 service from carriers has resulted in transport rates that far exceed charges for virtually any other interstate telephone service. Although there are virtually no technical differences between 800 and 900 transport, the transport rates of carriers to information service providers are more than four-fold that of 800 service.[1] In addition, lack of competition within the 900 service industry has led to adoption of restrictions by carriers in the manner and scope of information services totally unrelated to the consumer protection interests that the TDDRA promotes.

The competitive limitations of 900 could also be addressed, in part, by expediting the availability of 900 portability. We had hoped that the Commission would require 900

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[1] Some have stated in the past that concerns over the high price of 900 should be addressed by reducing 900 transport and billing rates. However, no action has been forthcoming to reduce the exorbitant cost of 900 services compared to 800 and other dialing patterns. AT&T charges 28¢ per minute for 900 transport and less than 10¢ per minute for 800 services. The best antidote to excessive 900 charges is for a competitive marketplace with availability of other dialing patterns.

portability in the near future in its recent rulemakings implementing the 1996 Act. However, the apparent limitation of near-term portability to local exchange carriers will not meet the needs of the information services industry. The vast majority of 900 numbers are assigned through the interexchange carriers. The interexchange carriers, understandably, use a lack of number portability to maintain high prices and to impose limitations on the due process and free speech rights of providers of information services. Carriers claim that IPs have no proprietary right in the 900 numbers assigned. Therefore, carriers feel free to terminate service to a particular 900 number, in their sole discretion, without even providing a referral message to a new telephone number. Consequently, the investment of the information provider in generating demand to the particular 900 number is completely wiped out.

Finally, it must be recognized that 900 is accessible only within the United States. As the global marketplace expands and the information age matures, the ability to offer and provide information services on an international basis is paramount to the further development of the availability of valuable information to the public.

TSIA agrees with the Commission that basic information regarding price, material terms and conditions should be provided to all prospective customers. The TSIA Code, a copy of which is annexed hereto, assures that this information is available to the Consumer. Thus, the use of non-toll free competitive dialing patterns and provision of quality service to consumers are mutually compatible. Accordingly, TSIA respectfully requests the Commission to level the playing field by reviewing excessive 900 transport rates, moving forward with 900 portability as soon as feasible and supporting technological innovation. By taking these actions, the

Commission will insure the development of a information service industry that provides a wide range of informed choices for consumers at reasonable rates.

3.

"[W]e propose to revise the presubscription definition to include a requirement that all presubscription arrangements (not just those involving toll-free service) be executed in writing or, alternatively, through payment by direct remittance, pre-paid account, or debit, credit, charge or calling card regardless of the telephone number used to access the relevant information service." (NPRM, ¶42).

TSIA understands the concerns of the Commission. As previously stated, we share a desire to ensure that customers knowingly enter into an agreement to incur charges for information services only after the relevant terms and conditions of service are provided to the customer. However, we are concerned with a broad-brush approach to regulation. At this juncture, with the virtually daily announcement of new and innovative services, we are not certain of the full ramifications of the proposal of the FCC. Under such circumstances, we are cautious to support a proposal that broadens the presubscription provisions as adopted by Congress under the TDDRA.

We do not believe that a rulemaking is an appropriate vehicle to expand the scope of congressional mandate. It is a basic tenet of statutory interpretation that the intent of Congress is to be drawn from the provisions of the statute itself. ("Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." Caminetti v. United States, 242 U.S. 470 (1916)). Here, the Commission would expand on the clear statutory language adopted by Congress to limit use of non-toll-free numbers for information services. In adopting the TDDRA, Congress is quite explicit in its desire to maintain the toll-free character of 800 service absent a written presubscription agreement or one of the competitive billing mechanisms stated therein. If Congress choose to apply the presubscription requirement to non-toll-free exchanges, it was free, and remains free, to do so. In contrast, although the Commission's intention is laudable, it is not for the Commission to rewrite the statutes adopted by Congress. Rather, it is the Commission's role to implement regulations within the statutory scheme constructed by Congress.

As the Commission notes in the NPRM, the large body of complaints relate to presubscription arrangements originating through 800 numbers. "Although virtually all complaints involving purportedly prescribed information services have involved programs available through 800 numbers, we are concerned that, without a uniform requirement for written presubscription, the same 'instant presubscription' abuses experienced by 800-number callers under oral presubscription might emerge on other dialing sequences." (NPRM ¶42). It is 800 presubscription arrangements that Congress took aim at in the amendments to the TDDRA set forth in the 1996 Act. As stated in the Conference Report, "Pursuant to the provisions of this section, information providers must obtain legal, informed consent from a caller through either a written pre-authorized contract between the information providers and the caller, or through the use of an instructive preamble at the start of all non-free 800 calls. Both of these options ensure that consumers know there is a charge for the information service and that they are giving their consent to be charged" (House amendment); "The Senate bill amends section 228(c) of the Communications Act to add protection against the use of <u>toll free telephone numbers</u> . . ."

(emphasis added). (1996 Act, Joint Explanatory Statement of the Committee of Conference, Section 701).

Accordingly, TSIA recommends that the Commission implement the provisions of the 1996 Act restricting the use of 800 and other toll-free numbers to charge consumers for information services, absent a written presubscription agreement or the billing mechanisms stated therein. However, it is inappropriate to stymie and restrict all competitive dialing mechanisms by requiring written presubscription agreements in the belief that future abuse may be possible when the ramifications of such limitations have neither been fully explored nor directed by Congress.

4.

"In particular, we ask parties to address our tentative conclusion that a carrier's billing of calls dialed to an 800 or other toll-free number on the basis of ANI is a violation of Section 228(c)(7)(A) of the Communications Act unless the call involves use of telecommunications devices for the deaf." (¶45)

The concern raised by the Commission is that the individual making the call and the party being charged are not always the same. Thus, a proposal is made to prohibit the use of automatic number identification ("ANI") for billing for calls dialed through 800 or other toll-free numbers. Of course, ANI is the primary vehicle utilized by all common carriers in this country and worldwide to bill calls for telecommunications services. For direct dialed communications, it has long been the interpretation of law, by this Commission and the Courts, that the individual subscriber is responsible for controlling use of their telephone. This is the case for all local, long distance and 900 telephone calls.

Although the burden of responsibility is on the subscriber, a number of mechanisms have been developed to assist the subscriber in controlling access to the telephone network from their telecommunications devices. For example, in most locations, blocking is available for interstate calls, international calls, and 900 calls. Through the local or interexchange carrier, as well as through a PBX for businesses, the subscriber can restrict access from the telephone.

While it is correct that 800 access is used by the carriers principally as a mechanism for calling card, credit card and collect transactions, given the long-standing reliance on ANI for billing for telecommunications services, a common carrier would be fulfilling its statutory obligation by utilizing ANI for billing or identification purposes for calls originally on 800 numbers. Moreover, adoption of the rule would prohibit the use of automated operator service functions used by all carriers to complete calls. For example, collect calls through 800-CALLATT utilize ANI for billing. The called party accepts the call and ANI is then used to bill the call. To the extent the concern is with the use of 800 as a gateway for redirect calls to a particular carrier under exorbitant tariffs, this loophole has already been closed by Congress by elimination of the tariff exemption under the 1996 Act.

With respect to potential toll fraud from aggregator phones, there are far less onerous and restrictive methods of ensuring proper billing. Namely, the information service industry already extensively uses databases to identify pay phones, hotels and other types of telephones to suppress calls and billing. In this regard, ANI provides a useful tool to control the complaints of which the Commission properly expresses concern. The answer is not a blanket prohibition, but rather properly balanced limitations on use. For example, the information provider entering into a presubscription arrangement, to prevent fraud, often desires to limit use of a PIN to a particular number. The ANI may be used to bill a number in conjunction with PIN access by the caller. The ANI would be used to record and bill the details of the call.

In addition, the limitation on ANI would reduce competition. To the extent a customer is presubscribed to a particular long-distance carrier, and wishes to use another carrier due to its lower rates on a specific route, unless they had a calling card or credit card, it would be prohibited from using an alternative carrier's 800 number to complete the call. The additional operator assistance charges associated with calling or credit cards would no doubt eliminate the savings in using the alternative carrier.

Accordingly, the Commission's regulations requiring a written presubscription arrangement for use of toll-free or 800 numbers fully effectuates the desire to protect consumers without unduly burdening the provision of carrier and enhanced services. The additional proposed limitation on use of ANI, therefore, runs contrary to long accepted practices for the telecommunications industry (of which subscribers are well apprised) and is not necessary, or authorized by Congress, to implement the reforms to the TDDRA established by the 1996 Act.

5.

"[W]e tentatively conclude that when a common carrier charges a telephone subscriber for a call to an interstate information service, any form of renumeration from that carrier to an entity providing or advertising the service, or any reciprocal arrangement between such entities, constitutes per se evidence that the charge levied actually exceeds the charge for transmission. Accordingly, interstate services provided through such arrangements would fit within the pay-per-call definition and, thus, be required to be offered exclusively through 900 numbers." (¶48)

To the extent that third parties are able to stimulate traffic over a carrier's network, carriers have always been free to tender, and have engaged in, the payment of commissions to these entities for traffic resulting from their attraction of new customers. In fact, the practice of paying commissions to marketing agents who generate traffic on their networks permeates the entire communications industry. These commission payments have never been held by the Commission to render the rate for transmission excessive. Rather, the additional traffic assists the carrier in keeping rates lower for all users of the network. This is true whether the call is to Microsoft's customer service, a family member, a friend, L.L. Bean or to time and weather.

A payment to third parties for stimulating long-distance calling has long been offered by AT&T, MCI, Sprint and long distance resellers, who pay third parties on a per minute basis for stimulation of inward and outward traffic. See, In Re: National Telephone Services, Inc., 8 FCC Rcd 654 (1993). (AT&T is not required to tariff commission payments to third parties). The payment of commissions is also analogous to carriers' payments to aggregators expressly condoned by the Commission in In Re AT&T's Private Payphone Commission Plan, 3 FCC Rcd 5834 (Common Carrier Bureau 1988), recon. and review denied, 7 FCC Rcd 7135 (1992). For example, aggregators who make telephones available to the public (e.g., hotels, hospitals, universities, private payphone owners) or who own premises where public telephones are located (e.g., convenience stores), receive commission payments for presubscribing their telephones to a particular long distance carrier. Cellular carriers similarly provide commissions for attracting new customers. Such payments often are based on a per minute or percentage of revenue calculation. Carriers have employed these practices for many years to attract traffic to their networks, and the Commission has never had occasion, or reason, to regulate it. See, International Telecharge Inc. v. AT&T, 8 FCC Rcd 7304, 7306 (1993) (where each 0+ customer pays the full tariffed rate for 0+ services, "regardless of commissions," "there is no relationship between AT&T's 0+ commission payments and AT&T's tariffed charges.")

Well-established carrier practice also has encouraged calling to particular places or numbers as a means of business generation. MCI's "Friends and Family" program creates calling circles in which calls between two specific telephone numbers receive a special discount if both are subscribed to MCI. This program clearly promotes calls to particular numbers and pays discounts to callers in lieu of commissions. Under the reasoning employed in the NPRM, the Friends and Family program would appear to give MCI an unreasonable interest in the communication's destination and would, consequently, render it unlawful.

Similarly, under AT&T's Terminating Switched Access Arrangements ("TSAA"), AT&T makes payments to entities that receive large volumes of calls over the AT&T network if the recipient connects its locations to AT&T by means of dedicated access. Although AT&T characterizes these payments as the purchase of access services, a close analysis of these arrangements reveals that they are essentially commission payments. The payments are to end users for agreeing to connect their facilities directly with AT&T's facilities. The Friends and

Family and TSAA examples are not offered herein as a challenge to the business practices of MCI and AT&T, but have been set forth to evidence that the payment of commissions by long distance carriers to marketing agents or end users for the generation of traffic, whether generic or specific in nature, is neither unjust nor unreasonable. Instead, commission payments are merely a means of generating minutes in a business where the economics of survival are substantially driven by volume.

The fact that the Commission is associated with terminating traffic to an information service does not alter the rate paid by the consumer. The consumer continues to pay the carrier's normal tariffed rate for all traffic between the originating and terminating location. Under such circumstances, the call does not fall within the definition of pay-per-call. In defining pay-per-call in the TDDRA, Congress explicitly defined the method and manner of providing information services to be regulated. The explicit targets of the legislation are services provided on 800 and "premium priced" information services. The TDDRA clearly states that pay-per-call is defined as a "charge that is greater than, or in addition to, the charge for transmission of the call." (47 U.S.C. Section 228(i)(1)(B)). By payment of a commission, the carrier has not become the information provider. The carrier has not acquired an influence or control over the content of the communications transported over its network. In a society founded upon free choice and expression, customers in and of themselves appropriately control the content of the telephone calls that they make on a carrier's lines of service. Here, calls are billed at tariffed rates, regardless of whether a customer calls a family member or accesses an information provider in a foreign country. The mere fact that a specific marketing campaign may encourage calls to certain locations or numbers does not give the carrier an interest in the content of the communication. The tariff charge remains for transport. Indeed, in the absence of such arrangements, if anything, the rate would be higher for all calls due to the need to spread fixed costs across lower volumes.

With respect to the accessing of overseas audiotext services, the Carrier acts only as the provider of common carrier services to complete such calls and is not the information provider. The charges are indeed only for transport and operator service functions, if any, associated with the international call. With the revision to the TDDRA, eliminating the "tariff" exemption, such calls are no longer directed to a particular carrier. Rather, the PIC carrier of the household will carry the call and the charge therefore will be the tariffed rate applicable to all calls to that country. Thus, the charges for access to such lines are the same as they would be for access to any residence, business or governmental agency in the foreign location.

MCI and AT&T both have programs for the payment of commissions to audiotext providers located in the United States for stimulating traffic from abroad. Under MCI's Global Asset Program, MCI assigns telephone numbers to IPs that are advertised internationally as direct dial calls to the United States. MCI then directs the inward international call to the IP and pays the IP a commission for each minute of connect time. Similarly, AT&T has long paid commissions to selected IPs under marketing agreements for attracting international calls to the IPs programs.

Domestically, charges for calls for which a commission may be paid by the carrier certainly are just and reasonable within the meaning of Section 201(b) of the Communications Act. Since the call is carried by the carrier of the household's own choosing, at tariffed rates, the rate will in virtually all instances be at a competitive price level. Ultimately, it is the free market consumer who determines just and reasonable rates. The consumer is evidently quite pleased to pay for transport under AT&T's, Sprint's, MCI's or a competitive carrier's rate schedule to access information services at rates far below that which could be charged by an IP using 900 service (due to the exorbitant transport, billing and bad debt charges associated with 900 service).

Finally, the local carriers are quickly establishing their own sponsored information services to attract calls and reap the benefits of local calling charges and access charges to reach the services. To limit third party commissions and require the use of 900 would be to de-stabilize the playing field. For example, NYNEX now offers a host of "free" information services through an area code 718 gateway. Is NYNEX or another carrier providing access to these information services or to talking yellow pages or to voice mail services engaging in unjust and unreasonable practices because the caller pays local message unit charges that support the cost of maintaining these non-900, "no additional charge" or "free" services? We believe the Commission would agree that such services need not be limited solely to 900 numbers. Similarly, for competitive reasons as well, unless the tariffed rate of the carrier paying the commission significantly exceeds the typical rate of other carriers for the same route, the provision of commission payments to third parties for traffic stimulation must not require the use of a 900 number.

CONCLUSION

Based on the foregoing, TSIA respectfully requests the Commission to adopt the recommendations herein. TSIA reaffirms its gratitude to the Commission for the opportunity to submit these comments.

Dated: New York, New York
August 26, 1996

Respectfully submitted,

TELESERVICES INDUSTRY ASSOCIATION

By:____________________

Joel R. Dichter, Esq.
Klein, Zelman, Rothermel & Dichter, L.L.P.
485 Madison Avenue
New York, NY 10022
(212) 935-6020

Code of Ethics of the TeleServices Industry Association

- The Code of Ethics
-
-

Code of Ethics and Standards for Pay-Per-Call

INTRODUCTION

The TeleServices Industry Association (TIA) is a member-driven organization dedicated to supporting the pay-per-call and other interactive telecommunications services. The TIA Ethics and Standards National Committee is responsible for activities which promote commercial fairness in the pay-per-call industry. In this regard, one of the primary goals of TIA is to increase its leadership role in industry self-regulation in alliance with state and federal agencies.

The Code of Ethics and Standards has been adopted by the Board of Directors, working in conjunction with the various Regulatory Agencies and approved by the membership at large. The Code represents TIA's general philosophy that self-regulatory measures are preferable to governmental mandates whenever possible. TIA coordinates several projects and activities:

- maintains, updates, and distributes the Code of Ethics and Standards;
- monitors practices throughout the pay-per-call industry for compliance with the Code;
- conducts programs and projects directed towards improved ethical awareness and practices in the pay-per-call industry;
- maintains a "seal of good standing" for TIA members;
- facilitates regular discussions between the industry and regulatory representatives to improve communication between the industry, government, and customers;
- publishes reports on its work at regular intervals and generally publicizes its role;
- provides a system for adjudication and redress for violations of the Code.

PART I: APPLICATION AND SCOPE

All entities involved in the pay-per-call industry are covered by the concept of "stream of commerce" including but not limited to service bureaus, information providers, billing companies, banks, LECs, TELCOs, credit card processors, advertising agencies, publishers, etc. If infractions are deemed detrimental to the industry, TIA will inform the entire "stream of commerce" placing them on notice of potentially aiding and abetting.

The Code incorporates all applicable federal, state, and local laws and regulations, Pay-per-call services are services where part of the overall charge paid by the customer for the service is passed on, directly or indirectly, to the individual, organization or company providing the service. This includes services where the caller pays only the transport charges, domestic or international, to access the service.

The Code applies to all pay-per-call services which are accessed by someone in the United States whether those services are provided from within the United States or from abroad and whether the service provider is situated within the United States or abroad.

Within the Code, promotion means anything where the intent or affect, either directly or indirectly, is to encourage the use of pay-per-call services, and the term "promotional material" should be construed accordingly.

Within the Code, service providers means any individual, organization or company that provides pay-per-call services in support of the pay-per-call industry. This includes all information providers, service bureaus, advertisers, publishers, billing companies, credit card processors, TELCOs, LECs, inter-exchange carriers, banks and those companies involved in consulting and supporting the pay-per-call industry.

PART II: GENERAL REQUIREMENTS

Service providers are responsible for ensuring that the content, promotion, and billing of all their pay-per-call services (whether produced by themselves or by their information providers) comply with the provisions of this Code and with all applicable federal, state, and local laws and regulations.

Services and promotional material must not contain anything which is in breach of the law nor omit anything which the law requires. Further, services and promotional material must not facilitate or encourage anything which is in any way unlawful.

Services and promotional material must not contain information inciting violence, sadism or cruelty, or be repulsive in nature. Further, services and promotional material must not be of a kind that is likely to:

- result in any unreasonable invasion of privacy;
- encourage or incite any person to engage in dangerous practices or to use harmful substances;
- induce or promote racial disharmony;
- disparage origin, gender, sexual orientation, marital status, or age.

PART III: ACCURACY IN PROMOTION AND PREAMBLE DISCLOSURES

1. Services and promotional material must not be of a kind that is likely to mislead by inaccuracy, ambiguity, exaggeration, or omission. All promot ions shall be clear, honest, and complete so that the consumer may know the exact nature of what is offered, the price, the terms of payment, and the commitment involved in requesting the service. Before publication of a promotion, service providers must be prepared to substantiate all statements made and shall not promote services with untrue, misleading, deceptive, fraudulent, or unfair statements.
2. Before promoting or providing services, the service provider must be able to substantiate any factual claims made. This material, together with a statement outlining its relevance, must be provided without delay if requested by TIA.
3. No service may be promoted as being "free" such as using va nity numbers to imply a type of service not offered, e.g., 1-800-xxx-free. Misleading advertisement implying the service is free or advertising in such a manner as to mislead by print size or verbal response as to imply the service being promoted is free, or any similar representations unless the service or portion of the service described is totally free and without any obligation whatsoever is not allowed. If it is not totally free, all terms and conditions must be clearly and conspicuously disclosed.
4. Services and promotional material must not seek to take advantage of any characteristic or circumstance which may make consumers vulnerable. This includes the provision and billing of services on telephone numbers which cannot be easily blocked by subscribers.

5. Service providers must take all reasonable steps to ensure that promotional material does not reach those for whom the service may be inappropriate.
6. Promotions shall not target those under 18 years of age.
7. Outbound recorded telemarketing or automatic dialing which results in a connection or transfer to a service on the same call shall not be used.
8. In all promotional material, the prefix number must be separate from the rest of the telephone number so that it can be readily identified without close examination.
9. The service provider must ensure that the charge for calls to each service is clearly stated in all promotions. Prices must be noted in the form of a numerical price-per-minute or the total maximum cost to the consumer of the complet e message or service. Promotions that are expressly designed to confuse or mislead will not be utilized, e.g., prices promoted in « minute or 1/5 minute increments, or intro/menu selections that are not clear, understandable or spoken at a normal rate of speech. All connection fees will be clearly disclosed.
10. In the case of promotion transmitted in television program time, the pricing information must be spoken as well as being visually displayed.
11. Textual pricing information must be legible, prominent, horizontal and presented in a way that does not require close examination.
12. Promotions shall not encourage the unauthorized use of another's telephone.

PART IV: ACCESS AND BILLING

1. Services shall be advertised, provided and billed only on calling formats that are in full compliance with all applicable laws and regulations.

   a) All dialing formats will be supported until a format is deemed illegal by the appropriate regulatory or legislative bodies. Accordingly, the TIA will strive to achieve the full honest, fair, and ethical opportunities and applications of all dialing patterns until such time as a dialing pattern shall be deemed illegal.

   b) All dialing formats shall advertise only in those cost increments which can or could actually be billed to the caller by the carrier, such that, if one minute is the smallest increment which can be billed to the caller, the advertisement shall not suggest a lesser price by reference to a smaller increment which is not recognized by the carrier.

   c) An advertisement shall not state a billing increment for calls s maller than the provider will allow, such that if the provider has a minimum billable amount per call, the provider must state the minimum billable amount per call, the provider must state the minimum billable amount and the proper incremental costs for calls longer than the minimum amount of time.

2. No service shall be billed as a deniable call record, i.e., a charge which will result in the subscriber's telephone service being terminated over disputed or unpaid charges.
3. Charging shall not begin before the caller is advised that charges will occur, the caller initiates some action authorizing billing, or the entire preamble is played. Billing for time listening to the menu or for time tagging between various types of services is not allowed.
4. To access paid services, the caller must not be required to dial more than one phone number in order to obtain the service advertised.
5. Calls shall be billed in the correct amount, and adjustments made in a timely and reasonable fashion.
6. Services must not be unreasonably prolonged or delayed to create "hang-time".
7. Where a service promotes other products or services, and such promotion exceeds 15 seconds in duration, the advertised/called service must be provided before the promotion.